

1 **WO**

2
3
4
5
6 **IN THE UNITED STATES DISTRICT COURT**
7 **FOR THE DISTRICT OF ARIZONA**
8

9 Derrith Watchman-Moore, et al.,

10 Plaintiffs,

11 v.

12 United States of America, et al.,

13 Defendants.
14

No. CV-17-08187-PCT-BSB

ORDER

15 Plaintiffs have filed a second motion for leave to file an amended complaint.
16 (Doc. 51.) Defendant United States of America opposes the motion. (Doc. 55.)
17 Plaintiffs have filed a reply in support of their motion. (Doc. 66.) The Court denies the
18 motion for the reasons below.

19 **I. Background**

20 On September 14, 2017, Plaintiffs commenced a wrongful death action under the
21 Federal Tort Claim Act (“FTCA”). (Doc. 1.) In the Complaint, Plaintiffs alleged that on
22 February 7, 2014, Chantal Moore (the decedent) was admitted to Fort Defiance Indian
23 Hospital with a diagnosis of pneumonia. (Doc. 1 at ¶ 31.) On February 12, 2014, the
24 decedent fell in the hospital bathroom, hit her head, and was found actively seizing on the
25 floor. (*Id.* at ¶ 37.) The decedent suffered another seizure later that day. (*Id.* at ¶ 38.) A
26 CT-scan showed hemorrhages, and the decedent showed signs of brain damage. (*Id.* at
27 ¶¶ 38-39.) The decedent was transferred to Flagstaff Medical Center where, after
28 surgery, she died on February 15, 2014. (*Id.* at ¶¶ 40, 42, 44.) After filing an

1 administrative claim, which was denied, Plaintiffs filed a Complaint in this Court. (*Id.* at
2 ¶¶ 10-11.) In addition to the United States of America (“Defendant” or “the
3 government”), the Complaint named numerous other defendants. (Doc. 1; Doc. 34 at 2.)
4 The government filed a motion to partially dismiss the Complaint and the assigned
5 magistrate judge issued a report and recommendation on that motion.¹ (Doc. 11.)

6 On June 22, 2018, District Judge Stephen M. McNamee adopted the report and
7 recommendation. (Doc. 47.) Pursuant to that order, the Court concluded that Arizona
8 law applied to Plaintiffs’ wrongful death claim under the FTCA. (*Id.* at 3-4.) The Court
9 dismissed, without prejudice, Plaintiffs’ claims for negligent supervision, hiring, and
10 retention. (Doc. 47 at 3, 5.) The Court dismissed all of the named Defendants except for
11 the United States of America and dismissed the named Plaintiffs except for Derrith
12 Watchman-Moore and Henry K. Moore, as the surviving parents of the decedent. (*Id.* at
13 3-5.) Therefore, after the June 22, 2018 Order, the only remaining claim in the
14 Complaint is the wrongful death claim under the FTCA brought by Plaintiffs Derrith
15 Watchman-Moore and Henry K. Moore, as decedent’s surviving parents, against
16 Defendant the United States of America.

17 In the June 22, 2018 Order, the Court denied Plaintiffs’ motion for leave to amend
18 without prejudice to filing another motion to amend by July 31, 2018. (*Id.* at 5.) The
19 Court noted that Plaintiffs’ proposed amended pleading was an “extensive narrative” that
20 did not comply with Rule 8 of the Federal Rules of Civil Procedure and to which
21 Defendant could not file “a meaningful answer.” (*Id.*) The Court cautioned that a
22 proposed amended pleading must comply with Rule 8 and cure any deficiencies noted in
23 the Report and Recommendation and its order. (*Id.* at 4-5.)

24 ///

25 ///

26 ¹ A report and recommendation was issued because, at that time, not all of the named
27 defendants had been served or consented to magistrate judge jurisdiction. (Doc. 34 at 1
28 n.1 (citing *Williams v King*, ___ F.3d ___, 2017 WL 5180205, at *3 (9th Cir. Nov. 9,
2017) (holding that the absence of consent from unserved defendants deprived the
magistrate judge of jurisdiction to dismiss the complaint)).) The assigned magistrate
judge now has full consent of all parties. (Doc. 48); *see* 28 U.S.C. § 636(c).

II. Motion for Leave to File Amended Complaint

On July 31, 2018, Plaintiffs filed a timely motion to amend, a proposed first amended complaint, and a supporting memorandum. (Docs. 51, 51-1, 51-2.) In their motion and memorandum, Plaintiffs state that they seek leave to amend to add: (1) a claim under Arizona’s survival statute, Ariz. Rev. Stat. § 14-3110 brought by Plaintiff Derrith Watchman-Moore, in her role as personal representative of decedent’s estate (Doc. 51 at 4; 51-2 at 3); and (2) a claim of negligent supervision and training. (Doc. 51 at 5; Doc. 51-2 at 4.) Defendant opposes the inclusion of certain allegations in the proposed pleading. (Doc. 55 at 2-10.) Defendant also argues that the proposed amended complaint fails to comply with Rule 8 or the June 22, 2018 Order. (*Id.* at 10-11.)

A. Pleading Requirements

A complaint must include “a short and plain statement of the grounds for the court’s jurisdiction” Fed. R. Civ. P. 8(a)(1). A complaint must also include “a demand for the relief sought” Fed. R. Civ. P. 8(a)(3). Finally, a complaint must contain “a short and plain statement of the claim showing that the pleader is entitled to relief.” Fed. R. Civ. P. 8(a)(2). “Each allegation must be simple, concise, and direct.” Fed. R. Civ. P. 8(d)(1). When a complaint includes the factual elements of a cause of action, but those facts are not organized into a “short and plain statement of the claim,” it may be dismissed for failure to satisfy Rule 8(a). *See Sparling v. Hoffman Constr. Co.*, 864 F.2d 635, 640 (9th Cir. 1988).

Additionally, a party’s claim must be stated “in numbered paragraphs, each limited as far as practicable to a single set of circumstances.” Fed. R. Civ. P. 10(b); *see Bautista v. Los Angeles Cty.*, 216 F.3d 837, 840-41 (9th Cir. 2000). Failure to set forth claims in such a manner places the burden “on the court to decipher which facts support which claims, as well as to determine whether a plaintiff is entitled to the relief sought.” *Haynes v. Anderson & Strudwick, Inc.*, 508 F. Supp. 1303, 1306 n.1 (E.D. Va. 1981). Whether to enforce Rule 10’s requirements is discretionary, but it is appropriate to do so when it is necessary to facilitate a clear presentation of the claims. *See Benoit v. Ocwen*

1 *Fin. Corp., Inc.*, 960 F. Supp. 287 (S.D. Fla. 1997) (requiring compliance with Rule 10
2 where allegations were confusing and conclusory, claims were commingled, and it was
3 impossible to determine nature of claims).

4 **B. The Proposed Pleading does not Comply with Rule 10**

5 The proposed first amended complaint (FAC) alleges that the action arises under
6 the FTCA. (Doc. 51-1 at 3.) Under the FTCA, Congress authorized suits against the
7 United States for money damages “for injury or loss of property, or personal injury or
8 death caused by the negligent or wrongful act or omission of any employee of the
9 Government while acting within the scope of his office or employment, under
10 circumstances where the United States, if a private person, would be liable” 28
11 U.S.C. § 1346(b)(1). The Act gives federal courts exclusive jurisdiction over such
12 claims. *Id.* The FTCA’s waiver of immunity permits causes of action against the United
13 States arising out of certain torts committed by federal employees acting within the scope
14 of their employment. *See Dolan v. U.S. Postal Service*, 546 U.S. 481, 483 (2006).
15 “[T]he extent of the United States’ liability under the FTCA is generally determined by
16 reference to state law.” *Molzof v. United States*, 502 U.S. 301, 305 (1992); *Erlin v.*
17 *United States*, 364 F.3d 1127, 1132 (9th Cir. 2004) (stating that underlying cause of
18 action in an FTCA suit comes from state law); *Schwarder v. United States*, 974 F.2d
19 1118, 1127 (9th Cir. 1992) (stating that “state law governs the scope of the United States’
20 *substantive* tort liability”) (emphasis in original).

21 Further, under the statutory procedure set forth in 28 U.S.C. § 2675(a), a “tort
22 claimant may not commence proceedings in court against the United States without first
23 filing [his] claim with an appropriate federal agency and either receiving a conclusive
24 denial of the claim from the agency or waiting for six months to elapse without a final
25 disposition of the claim being made.” *Jerves v. United States*, 966 F.2d 517, 519 (9th
26 Cir. 1992); *see Brady v. United States*, 211 F.3d 499, 502 (9th Cir. 2000) (a claimant
27 under the FTCA must comply with § 2675(a) before a district court can exert subject
28 matter jurisdiction over the claim). The “claim requirement of section 2675 is

1 jurisdictional in nature and may not be waived.” *Jerves*, 966 F.2d at 519 (quoting *Burns*
2 *v. United States*, 764 F.2d 722, 724 (9th Cir. 1985)).

3 In the motion for leave to amend, Plaintiffs assert that the proposed pleading adds
4 a claim under Arizona’s survival statute, Ariz. Rev. Stat. § 14-3110, and adds allegations
5 to support a “negligent supervision and training claim.” (Doc. 51 at 4-5, Doc. 51-2 at 3-
6 4.) Although the Court previously denied Plaintiffs leave to amend based, in part, on the
7 form of the filing, (Doc. 47 at 4), Plaintiffs have again submitted a proposed FAC that is
8 “an extensive narrative.” (*Id.*; Doc. 51-1 at 1-52.) The caption of the proposed amending
9 pleading identifies the FAC as including claims for “Wrongful Death, Survivor, Federal
10 Tort Claim.” (*Id.* at 1.) The proposed FAC includes sections entitled Introduction (*id.* at
11 2-3), Parties, Jurisdiction, and Venue (*id.* at 3-9), General Allegations (*id.* at 9-14),
12 Factual Allegations followed by another heading entitled Supervisory Liability (*id.* at 14-
13 50), and Demand against Defendants. (*Id.* at 50-52).

14 The proposed FAC fails to clearly identify Plaintiffs’ claims—the underlying state
15 law causes of action—and does not set forth those claims in separate counts. *See*
16 *Bautista*, 216 F.3d at 840-41; *see Watson v. United States*, 2017 WL 2904263, at *2
17 (identifying the FTCA as a “vehicle through which [a plaintiff] brings [tort] claims
18 against the United States.”). Plaintiffs’ failure to clearly identify their claims has caused
19 confusion about what claims they are asserting. For example, Plaintiffs’ motion to
20 amend refers to a “negligent supervision and training claim.” (Doc. 51 at 5.) However,
21 the proposed FAC does not identify such a claim as a separate count. (Doc. 52-1 at 1-
22 52.) In its response to the motion to amend, Defendant refers to a claim of negligence
23 based on a “failure to adopt, revise, or implement adequate hospital policy on fall
24 prevention.” (Doc. 55 at 2.) However, because the proposed FAC does not clearly
25 identify any particular claim, it is unclear whether the proposed FAC asserts such a
26 negligence claim. Additionally, Defendant states that the only claim Plaintiffs properly
27 exhausted is a medical malpractice claim (Doc. 55 at 6), but the proposed FAC does not
28

1 clearly identify that claim in the body of the FAC and does not include that claim in a
2 separate count. *See Bautista*, 216 F.3d at 840-41.

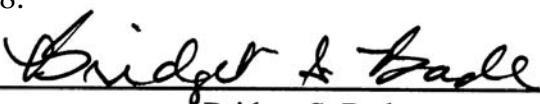
3 Plaintiffs' failure to identify the state law causes of action and failure to set forth
4 their claims in separate numbered paragraphs has shifted the burden "on the court to
5 decipher which facts support which claims, as well as to determine whether [Plaintiffs
6 are] entitled to the relief sought." *Haynes*, 508 F. Supp. at 1306 n.1. The manner in
7 which the proposed FAC is drafted does not comply with Rule 10 or the Court's June 22,
8 2018 order and prevents the Court, and Defendant, from determining what claims
9 Plaintiffs are asserting. Additionally, Plaintiffs' failure to clearly identify each of their
10 claims prevents the Court from determining whether they have satisfied the exhaustion
11 requirement as to each claim. *See* 28 U.S.C. § 2675(a); *Jerves*, 966 F.2d at (stating that
12 because the requirement of an administrative claim is jurisdictional, it "must be strictly
13 adhered to."). For these reasons, the Court denies the motion for leave to amend.
14 However, the Court grants Plaintiffs a final opportunity to file a motion for leave to
15 amend and to submit a proposed FAC that fully complies with the federal pleading
16 requirements, including the requirements in Rule 10. If Plaintiffs wish to file an amended
17 complaint, they shall set forth each claim as a separate count by clearly numbering and
18 distinguishing each claim, including the underlying factual allegations for each claim.

19 Accordingly,

20 **IT IS ORDERED** that Plaintiffs' second motion for leave to amend (Doc. 51) is
21 **DENIED** without prejudice.

22 **IT IS FURTHER ORDERED** that within **fourteen days** of the date of this order,
23 Plaintiffs may file a third motion for leave to amend. The motion for leave to amend and
24 the proposed amended complaint must comply with the applicable federal and local rules
25 of Civil Procedure and this Order.

26 Dated this 28th day of August, 2018.

27 
28

Bridget S. Bade
United States Magistrate Judge